

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JASMINE PAUL SANCHEZ,

Plaintiff,

v.

WILLIAM REUBART,

Defendant.

Case No. 3:21-cv-00292-MMD-CLB

SCREENING ORDER ON
FIRST AMENDED COMPLAINT
(ECF No. 10)

Pro se Plaintiff Jasmine Paul Sanchez, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a first amended civil rights complaint (“FAC”) pursuant to 42 U.S.C. § 1983 (ECF No. 10), and has filed an application to proceed *in forma pauperis* (ECF No. 7). The Court now grants the application to proceed *in forma pauperis* and screens Sanchez’s FAC under 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. See *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States; and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

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1 In addition to the screening requirements under § 1915A, under the Prison
2 Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated person’s
3 claim if “the allegation of poverty is untrue” or if the action “is frivolous or malicious, fails
4 to state a claim on which relief may be granted, or seeks monetary relief against a
5 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a
6 complaint for failure to state a claim upon which relief can be granted is provided for in
7 Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
8 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
9 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
10 the complaint with directions as to curing its deficiencies, unless it is clear from the face
11 of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*
12 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*
14 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
15 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
16 support of the claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d
17 756, 759 (9th Cir. 1999). In making this determination, the Court takes as true all
18 allegations of material fact stated in the complaint, and the Court construes them in the
19 light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
20 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
21 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
22 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
23 must provide more than mere labels and conclusions. *See Bell Atl. Corp. v. Twombly*,
24 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
25 insufficient. *See id.*

26 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
27 that, because they are no more than mere conclusions, are not entitled to the assumption
28 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide

1 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
2 there are well-pleaded factual allegations, a court should assume their veracity and then
3 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
4 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
5 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

6 Finally, all or part of a complaint filed by an incarcerated person may be dismissed
7 *sua sponte* if that person’s claims lack an arguable basis either in law or in fact. This
8 includes claims based on legal conclusions that are untenable (*e.g.*, claims against
9 defendants who are immune from suit or claims of infringement of a legal interest which
10 clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*,
11 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
12 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

13 **II. SCREENING OF FAC**

14 In December 2021, this Court issued a screening order dismissing Sanchez’s
15 Complaint in its entirety with leave to amend. (ECF No. 8 at 6.) In the screening order,
16 the Court granted Sanchez leave to amend his denial of access to the courts claim. (*Id.*
17 at 4.) The screening order explained that “Sanchez does not allege how the named
18 defendants violated his rights. Although Sanchez identifies two defendants in the caption,
19 he does not attribute any actions to these defendants. Sanchez also has not alleged that
20 he suffered actual prejudice with respect to a contemplated or existing deadline. Sanchez
21 states that he was unable to mail a legal document, but he does not identify the type of
22 document he was unable to send, what type of case it was for, and how the delayed filing
23 injured him.” (*Id.*) In response, Sanchez filed an FAC. (ECF No. 10.)

24 In his FAC, Sanchez sues Defendant William Reubart for events that took place
25 while Plaintiff was incarcerated at Ely State Prison (“ESP”), brings one claim, and seeks
26 monetary damages or a music player. (ECF No. 10 at 1-3, 6.) In the FAC, Sanchez
27 provides one paragraph of new allegations and attaches his original complaint as an
28 exhibit. (*See id.* at 2, 7-23.)

1 Sanchez's new allegations state the following. Prison officials denied Sanchez
2 access to the courts when they refused to return Sanchez's legal documents back to him.
3 (*Id.* at 2.) The legal documents consisted of written affidavits from ESP staff and inmates
4 confirming that they all heard Reubart tell Sanchez how he was going to find a way to kill
5 Sanchez and make it look like suicide. (*Id.*) Those affidavits were in an envelope. (*Id.*)
6 Prison officials have neither mailed out the envelope nor returned the envelope back to
7 Sanchez. (*Id.*) Sanchez alleges denial of access to the courts. (*Id.* at 3.)

8 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*,
9 518 U.S. 343, 346 (1996). To establish a violation of the right of access to the courts, a
10 prisoner must establish that he or she has suffered an actual injury, a jurisdictional
11 requirement that flows from the standing doctrine and may not be waived. *Id.* at 349. An
12 "actual injury" is "actual prejudice with respect to contemplated or existing litigation, such
13 as the inability to meet a filing deadline or to present a claim." *Id.* at 348. Delays in
14 providing legal materials or assistance that result in actual injury are "not of constitutional
15 significance" if "they are the product of prison regulations reasonably related to legitimate
16 penological interests." *Id.* at 362. The right of access to the courts is limited to non-
17 frivolous direct criminal appeals, habeas corpus proceedings, and § 1983 actions. *Id.* at
18 353 n.3, 354-55.

19 The Court finds that Sanchez fails to state a colorable denial of access to the courts
20 claim. Once again, Sanchez has not alleged that he suffered actual prejudice with respect
21 to a contemplated or existing deadline, has not identified what type of case the documents
22 were for, and has not explained how this delayed filing injured him. Additionally, Sanchez
23 does not identify who took his documents.¹ Because the Court gave Sanchez an
24 opportunity to correct these deficiencies, but he has not, the Court dismisses this action
25 with prejudice as amendment would be futile. *See Zucco Partners, LLC v. Digimarc Corp.*,
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28 ¹Sanchez alleges that the affidavits were about Reubart but he does not identify
who took the documents from him.

1 552 F.3d 981, 1007 (9th Cir. 2009) (leave to amend not required when plaintiff was
2 previously allowed to amend but failed to correct identified deficiencies).

3 **III. CONCLUSION**

4 It is ordered that Sanchez's application to proceed *in forma pauperis* (ECF No. 7)
5 without having to prepay the full filing fee is granted. Sanchez will not be required to pay
6 an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant to 28
7 U.S.C. § 1915, as amended by the Prison Litigation Reform Act. The movant herein is
8 permitted to maintain this action to conclusion without the necessity of prepayment of fees
9 or costs or the giving of security therefor.

10 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison
11 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
12 the account of **Jasmine Paul Sanchez, #1148512** to the Clerk of the United States
13 District Court, District of Nevada, 20% of the preceding month's deposits (in months that
14 the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action.
15 The Clerk of the Court will send a copy of this order to the Finance Division of the Clerk's
16 Office. The Clerk will send a copy of this order to the attention of **Chief of Inmate**
17 **Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV
18 89702.

19 It is further ordered that, even though this action is dismissed, or is otherwise
20 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915, as amended
21 by the Prison Litigation Reform Act.

22 It is therefore ordered that the FAC (ECF No. 10) is the operative complaint. The
23 FAC (ECF No. 10) is dismissed in its entirety with prejudice as amendment would be futile
24 for failure to state a claim.

25 The Clerk of Court is directed to enter judgment accordingly and close this case.

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1 It is further ordered that this Court certifies that any *in forma pauperis* appeal from
2 this order would not be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

3 DATED THIS 28th Day of February 2022.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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